



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0438; FRL-8773-02-R9]

### Limited Approval and Limited Disapproval of California Air Quality Implementation Plan Revisions; Amador Air District; Stationary Source Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the Amador Air District's (AAD or "District") portion of the California State Implementation Plan (SIP). This revision governs the District's issuance of permits for stationary sources, and focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or "Act"). Under the authority of the CAA, this action simultaneously approves a local rule that regulates these emission sources and directs the District to correct rule deficiencies.

**DATES:** This rule is effective [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2021-0438. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who

needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4174, or by email to *batchelder.amber@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we” and “our” refer to the EPA.

## **Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

### **I. Proposed Action**

On August 23, 2021 (86 FR 47046), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Adopted	Submitted <sup>1</sup>
AAD	400	NSR Requirements for New and Modified Major Sources in Nonattainment Areas	08/20/19	11/05/19

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not fully satisfy the relevant requirements for preconstruction review and permitting under section 110 and part D of the Act. First, Section

---

<sup>1</sup> The submittal was transmitted to the EPA via a letter from the California Air Resources Board dated October 31, 2019.

4.5 of Rule 400 allows the District to approve interprecursor trading (IPT) of ozone precursors to satisfy emission offset requirements, provided certain conditions are satisfied. However, on January 29, 2021, the D.C. Circuit Court of Appeals in *Sierra Club v. EPA*, 984 F.3d 1055, issued a decision holding that the CAA does not allow IPT for ozone precursors and vacating the provisions in the EPA's Nonattainment New Source Review (NSR) regulations allowing IPT for ozone precursors. In light of the Court's decision, the provision in Section 4.5 allowing for IPT for ozone precursors is no longer permissible. Second, Section 9.1(b)(iii) of Rule 400 fails to reference Section 7.4 (Relaxation in Enforceable Limitations). This apparent typographical error creates a deficiency in Section 9.1(b)(iii) of the rule, because it suggests that the source and the District need not adhere to the general requirements for establishing Plant-wide Applicability Limitations (PALs) in Section 9.4, which are required by 40 CFR 51.165(f)(4). Third, due to an apparent typographical error, Section 9.5 of the rule does not require the District to implement the public participation provisions of Section 8 for purposes of processing a request for a PAL to be established, renewed or increased in accordance with 40 CFR 51.165(f)(5). Therefore, the provisions of Section 9.5 are deficient. This error also causes a related deficiency in Sections 9.4(a)(ii), 9.8(b)(iii), 9.10(a), and 9.11(c), because these rule sections cross-reference Section 9.5, which refers to the wrong section of the rule for public participation requirements. Fourth, Section 9.10(d)(i) references Section 9.5 when it should reference Section 9.6. This error appears typographical in nature. However, this error creates a deficiency because it does not provide the correct reference for how to perform the emissions level calculation in accordance with 40 CFR 51.165(f)(10)(iv)(A). Fifth, Section 9.12(a)(iii) includes a reference to Section 7.12 of the rule (which does not exist), instead of Section 9.12. This apparent typographical error creates a deficiency in Section 9.12(a)(iii), because it does not include the requirement to comply with the provisions of Section 9.12 in accordance with 40 CFR 51.165(f)(12)(i)(C).<sup>2</sup>

---

<sup>2</sup> We note that the EPA recently adopted a rule known as the NSR Error Corrections Rule, effective August 18, 2021, which corrected minor, inadvertent, and non-substantive errors in 40 CFR parts 51 and 52, which govern NSR permitting programs, and updated the regulatory text to reflect statutory changes and certain court decisions vacating

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

## III. EPA Action

No comments were submitted on our proposal. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of the rule.

As a result, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months.

In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. Sanctions will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

## IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the rule listed in Table 1 of this preamble. The EPA has made, and will continue to make, these documents available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION**

---

elements of the regulatory text, but did not change the requirements within these programs. See 86 FR 37918 (July 19, 2021). States have discretion as to when to make the changes in this rule and may choose to combine them with other SIP submittals. See 86 FR 37918, 37923-24. Accordingly, this recent rulemaking does not affect our final action.

**CONTACT** section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

### *F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of

the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: January 6, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

**Subpart F – California**

2. Section 52.220 is amended by adding paragraph (c)(568) to read as follows:

**§52.220 Identification of plan-in part.**

\* \* \* \* \*

(c) \* \* \*

(568) The following new regulation was submitted on November 5, 2019 by the Governor’s designee as an attachment to a letter dated October 31, 2019.

(i) *Incorporation by reference.* (A) Amador Air District.

(I) Rule 400, “NSR Requirements for New and Modified Major Sources in Nonattainment Areas,” adopted on August 20, 2019.

(B) [Reserved]

(ii) [Reserved]

\* \* \* \* \*

[FR Doc. 2022-00385 Filed: 1/11/2022 8:45 am; Publication Date: 1/12/2022]